RESOLUTION NO. 2019-10

A RESOLUTION OF THE VILLAGE COUNCIL OF THE
VILLAGE OF KEY BISCAYNE, FLORIDA,
AUTHORIZING THE VILLAGE MANAGER TO
EXECUTE AN AGREEMENT WITH AUTOMATIC DATA
PROCESSING, INC. FOR PAYROLL, PERSONNEL TIME
AND ATTENDANCE SERVICES; PROVIDING FOR A
WAIVER OF COMPETITIVE BIDDING; AND
PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Village of Key Biscayne ("Village") has utilized Automatic Data Processing, Inc. ("Contractor") to provide payroll and human resource management services ("Existing Services") since 1999; and

WHEREAS, the Village Council desires to incorporate additional time and attendance services provided through the Contractor's "Workforce Now" offerings ("Additional Services"); and

WHEREAS, the Village Council desires to authorize the Village Manager to negotiate and enter into an agreement with the Contractor for the Existing Services and the Additional Services (collectively, the "Services") consistent with the proposal attached hereto as Exhibit "A" ("Proposal"); and

WHEREAS, pursuant to Section 2-85 of the Village Code, the Village Council finds it impractical to apply the Village's competitive bidding procedures for the purchase of the Services from the Contractor and therefore waives the Village's competitive bidding requirements; and

WHEREAS, the Village Council finds that adoption of this Resolution is in the best interest and welfare of the residents of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1.   **Recitals Adopted.** That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2.   **Authorization.** That the Village Manager is hereby authorized to negotiate and execute an agreement with the Contractor for the Services that is consistent with the Proposal attached hereto as Exhibit "A," subject to approval by the Village Attorney as to form, content, and legal sufficiency.

Section 3.   **Waiver of Competitive Bidding.** That the Village Council hereby waives the Village's competitive bidding procedures for the purchase of the Services pursuant to Section 2-85 of the Village Code of Ordinances.

Section 4.   **Effective Date.** That this Resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this 5th day of February, 2019.

MICHAEL W. DAVEY, MAYOR

ATTEST:

JENNIFER MEDINA, CMC
VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

EXHIBIT "A"

Investment Summary
Quote Number
02-2019-554418.2

ADP
A more human resource.

Company Information

Village Of Key Biscayne
88 W Mcintyre St
Key Biscayne, FL 33149
United States

Executive Contact

Juan Gutierrez
Director HR
jcgutierrez@keybiscayne.fl.gov
(305) 365-8904

147
Total
Employees

$1,700.00
Implementation
Costs

$6,526.80
Total Annual
Investment

Expiration
2/8/2019

ADP Sales Associate

Vanessa Justice
ADP Workforce Management Consultant
vanessa.justice@adp.com
(954) 717-6969

Sales Order
Quote Number
02-2019-554418.2

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Company Information

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88 W Mcintyre St
Key Biscayne, FL 33149
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Executive Contact

Juan Gutierrez
Director HR
jcgutierrez@keybiscayne.fl.gov
(305) 365-8904

Processing Fees and Considerations
Number of Employees: 147 on Village Of Key Biscayne , Company Code ALS

Monthly Processing	Count	Min	Base	Rate	Monthly	Annual
Workforce Now Time and Attendance • Essential Time	147	$250.00	-	$3.70	$543.90	$6,526.80

Total Annual Investment	Total Annual
Workforce Now Services	$6,526.80

Other Considerations Implementation	Setup
• Implementation for Workforce Now Time and Attendance	$1,700.00

Total Other Considerations	Total Setup
Implementation and Setup	$1,700.00

Sales Order
Quote Number
02-2019-554418.2

A more human resource.

Company Information	Executive Contact
Village Of Key Biscayne	Juan Gutierrez
88 W Mcintyre St	Director HR
Key Biscayne, FL 33149	jcgutierrez@keybiscayne.fl.gov
United States	(305) 365-8904

Important Project and Billing Information

Product
Billing for Essential Time will begin on the date Essential Time is available for use by the client in a production environment. The billing count is based on all non-terminated employees in the Time Module. This count includes practitioners and supervisors.

Other
Start Date: Time:3/6/2019
ADP's Fees for Service will be debited directly out of client's bank account of their choosing seven (7) days from invoice date.
Expiration Date: 2/8/2019

Summary

Estimated Annual Net Investment:	$6,526.80	Total Net Implementation:	$1,700.00

The ADP Services Listed on this Sales Order are provided at the prices set forth herein and in accordance with the ADP Master Services Agreement (or other similar agreement governing ADP's services), which shall include any appendix, exhibit, addendum, schedule or other similar document attached thereto or accompanying this Sales Order. By signing below you are acknowledging and agreeing to such terms and conditions and to the listed prices.

ADP, LLC

Client: Village Of Key Biscayne

ADP, LLC	Client
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

Sales Order
Quote Number
02-2019-554418.2

ADP
A more human resource

Company Information

Village Of Key Biscayne
88 W Mcintyre St
Key Biscayne, FL 33149
United States

Executive Contact

Juan Gutierrez
Director HR
jcgutierrez@keybiscayne.fl.gov
(305) 365-8904

Workforce Now Included Services

Essential Time
- Time Collection
- PTO Management & Reporting
- Request & Approval Workflows
- ADP Portal with Customized Content

- Rule Based Calculations
- Scheduling
- Mobile Access
- Paid Time Off Accruals

Thank you for your consideration

ADP, LLC: (referred to herein as "ADP")

One ADP Boulevard
Roseland, New Jersey 07068
United States

Client: (referred to herein as "Client")

Village Of Key Biscayne
88 W Mcintyre St

01-23-2019
(Effective Date)

Key Biscayne, FL 33149, United States

Attention
Juan Gutierrez

This Amendment modifies, amends, and supplements the terms and conditions of the ADP Major Accounts Services -Master Services Agreement (or Major Accounts Agreement or such equivalent terms and conditions or agreement governing the provision and receipt of ADP's Major Account's services including but not limited to any product specific terms set forth in such prior agreement) between ADP and Client (the "Agreement") and each Annex listed below is added and incorporated into the Agreement in full by this reference as if set forth in the Agreement in full.

ANNEX C:	TIME AND ATTENDANCE SERVICES

BY SIGNING BELOW, CLIENT ACKNOWLEDGES THAT THEY HAVE REVIEWED THE ENTIRE AGREEMENT INCLUDING THE TERMS AND CONDITIONS IN EACH ANNEX CORRESPONDING TO SERVICES PURCHASED PURSUANT TO THE SALES ORDER.

If there is a conflict between this Amendment and any other agreement (or any amendment or addendum to such other agreement) between Client and ADP (or if such other agreement contained terms for services that were not purchased at the time the other agreement was executed), this Amendment shall govern with respect to the services listed above. The terms set forth herein replace in their entirety any duplicative terms set forth in Client's current agreement for services.

ADP, LLC	CLIENT
(Signature of Authorized Representative)	(Signature of Authorized Representative)
(Name - Please Print)	(Name - Please Print)
(Title) (Date)	(Title) (Date)

1   **ADP Time & Attendance Services.** ADP will provide Client with those time & attendance services delivered via ADP Workforce Now including ADP Workforce Now Essential Time, ADP Workforce Now Enhanced Time or ADP Enterprise eTime ("**ADP Time & Attendance Services**"). For hosted ADP Workforce Now Enhanced Time and ADP Enterprise eTime products only, additional license terms are available at www.adp.com/tlmlicenseterms. ADP Time & Attendance Services are available for use in a limited number of countries outside the United States, although certain restrictions and requirements may apply.

2   **Billing for ADP Time & Attendance Services.** Billing for ADP Time & Attendance Services will begin on the date such Services are available for use by Client in a production environment.

3   **Time & Attendance Hardware.** If ADP agrees to provide Client with the data collection devices (e.g. Timeclock, HandPunch, etc.) (the "Time & Attendance Hardware") as described in the Sales Order, the following terms will apply:

   3.1   If Client procures Time & Attendance Hardware, Client shall provide and maintain an installation environment (including all power, wiring and cabling required for installation) as specified in the manufacturer's product documentation and other written instructions provided to Client by ADP.

   3.2   Regarding Time & Attendance Hardware provided on a subscription basis only, Client shall not make any alterations or attach any devices thereto that are not provided by ADP, nor shall Client remove same from the place of original installation without ADP's prior consent. All right and title in the Time & Attendance Hardware procured on a subscription basis is, and at all times shall remain, that of ADP and a separate item of personal property of ADP, notwithstanding its attachment to other items or real property, and promptly upon termination of the ADP Time & Attendance Services, for any reason whatsoever, Client shall, at its expense, return such Time & Attendance Hardware in good condition, in accordance with ADP's instructions, normal wear and tear excepted. If such Time & Attendance Hardware is not promptly returned, Client agrees to purchase same at fair market value. Repairs and replacements required as a result of any of the following shall not be included in any maintenance services and shall be charged at ADP's then current rates: (i) damage, defects, or malfunctions resulting from misuse, accident, neglect, tampering, unusual physical, or electrical stress, or causes other than normal or intended use; (ii) failure of Client to provide and maintain a suitable installation environment; (iii) any alterations made to or any devices not provided by ADP attached to the Time & Attendance Hardware; and (iv) malfunctions resulting from use of badges or supplies not approved by ADP.

   3.3   **Maintenance Fees.** Maintenance services for the Time & Attendance Hardware apply automatically to Time & Attendance Hardware obtained under the subscription option (and any charges therefore are already included in the monthly time and attendance subscription fees). The costs for maintenance services for Time & Attendance Hardware under the purchase option are not included in the purchase price for such equipment; a separate annual maintenance fee applies. Client, under the purchase option, may terminate its receipt of maintenance services by providing written notice to ADP no less than thirty (30) days prior to the end of the then current annual coverage period. ADP is not required to rebate to Client any maintenance fees relating to a current or prior coverage period. (NOTE: If Client selects the purchase option but opts not to receive (or terminates) maintenance services hereunder by executing a waiver of maintenance services, any such services provided by ADP at Client's request will be subject to ADP's then current charges for such services.) No Time & Attendance Hardware maintenance is done at the Client site. Client shall bear all delivery/shipping costs and all risk of loss during shipment/delivery of Time & Attendance Hardware relating to maintenance services.

   3.4   **Maintenance Services.** ADP will maintain the Timeclock Equipment to be free from defects in material and workmanship as follows: Any parts found to be defective (except as specifically excluded below) shall be replaced or repaired, at ADP's or its designee's option, without charge for parts or labor, provided that the Time & Attendance Hardware has been properly installed and maintained by Client and provided that such equipment has been used in accordance with this Agreement or other accompanying documentation including, but not limited to, Client's Sales Order provided by ADP or its designee and has not been subject to abuse or tampering.

   3.5   **Biometrics.**

      1.1.1.   **Definitions.**

         1.1.1.1. **"Biometric Data"** includes the information collected by timeclocks and software that use finger and/or hand scan technology, which potentially may include Biometric Identifiers and Biometric Information.

         1.1.1.2. **"Biometric Identifier"** means a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry.

         1.1.1.3. **"Biometric Information"** means any information, regardless of how it is captured, converted, stored, or shared, based on an individual's biometric identifier used to identify an individual.

         1.1.1.4. **"Biometric Services"** means services provided by ADP to Client via the use of timeclocks and software in connection with ADP's provision of Time & Attendance Services, to the extent such timeclocks or software collect, store or use Biometric Data.

         1.1.1.5. **"Biometric User"** means Client's employees or independent contractors who are requested or required by Client to use Biometric Services to record their attendance, hours worked or other work-related data.

      1.1.2.   **Additional Terms.** Biometric Services are optional. In certain jurisdictions, there are laws and regulations that govern the collection, use, and retention of biometric information, which potentially may apply to Client's use of Biometric Services. To the extent Client elects to use Biometric Services, Client agrees to comply with all such laws and regulations in accordance with this Agreement and Section 3.2 of the Annex A. In the event Client is unwilling to comply with laws and regulations relating to Biometric Services, Client will be able to continue to use Time & Attendance Services without Biometric Services. The following terms and conditions apply to Biometric Services to the extent Biometric Services are part of the scope of Services:

1.1.2.1. **Requirements for Receipt of Biometric Services.** Before any Client or Biometric User is permitted to use any Biometric Services in a jurisdiction where laws and regulations potentially govern such use, Client will comply with the following requirements, in addition to any other requirements imposed by potentially applicable law (to the extent there is a conflict between the requirements below and the requirements of potentially applicable law, Client will comply with potentially applicable law):

1.1.2.2. **Client Biometric Information Policy.** Client will implement, distribute and make available to the public, a written policy establishing Client's policy with respect to the use of Biometric Data. Such policy will include:
    1.1.2.2.1. a retention schedule and guidelines for permanently destroying Biometric Identifiers and Biometric Information;
    1.1.2.2.2. a commitment to destroy Biometric Data when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within 3 years of the individual's last interaction with Client, whichever occurs first; and
    1.1.2.2.3. any additional requirements as required by applicable law.

1.1.2.3. **Biometric User Notice and Consent.** Client will provide notice and procure and retain appropriate consents or releases from Biometric Users in the manner and to extent the same are required by applicable law, including:
    1.1.2.3.1. notifying Biometric Users in writing that Client, its vendors, and/or the licensor of Client's time and attendance software are collecting, capturing, or otherwise obtaining Biometric Users' Biometric Data, and that Client is providing such Biometric Data to its vendors and the licensor of Client's time and attendance software; such notice will specify the purpose and length of time for which Biometric User's Biometric Data is being collected, stored, and used;
    1.1.2.3.2. obtaining a written release or consent from Biometric Users (or their legally authorized representative) authorizing Client, its vendors, and licensor of Client's time and attendance software to collect, store, and use the individual's Biometric Data for the specific purpose disclosed by Client, and authorizing Client to provide such Biometric Data to its vendors and the licensor of Client's time and attendance software; and
    1.1.2.3.3. if requested by ADP, providing to ADP copies of the required consents or releases collected and retained by Client, and/or certifying to ADP that such consents or releases have been obtained.

1.1.2.4. **Retention and Purging of Biometric Data.** Client will work with ADP to ensure that Biometric Data is retained and purged in accordance with applicable law. To the extent necessary for the purging or deletion of such Biometric Data, Client agrees to provide timely notification to ADP of the termination of the employment, or the satisfaction of the purpose for which Biometric Data was collected with respect to any given Biometric User. ADP is not responsible for Client's failure to provide timely notification of the termination of the employment, or the satisfaction of the purpose for which Biometric Data was collected with respect to any given Biometric User.

1.1.2.5. **Storage of Biometric Data in Timeclocks.** Client agrees that it shall use a reasonable standard of care consistent with potentially applicable law to store, transmit and protect from disclosure any paper or electronic biometric data collected in timeclocks. Such storage, transmission, and protection from disclosure shall be performed in a manner that is the same as or more protective than the manner in which Client stores, transmits and protects from disclosure other confidential and sensitive information, including personal information that can be used to uniquely identify an individual or an individual's account or property, such as genetic markers, genetic testing information, account numbers, PINs, driver's license numbers and social security numbers.

1.1.3. **Third Party Beneficiary.** Notwithstanding anything to the contrary in the Agreement, Client agrees that ADP and licensor of any applicable Biometric Services (and their respective successors and assigns) are third party beneficiaries of this Agreement solely as it relates to Biometric Services.

1.1.4. **Additional Termination Provisions for Biometric Services.** If ADP determines that Client has failed to comply with any potentially applicable laws and regulations applicable to the Biometric Services, ADP may, in its sole discretion and upon notice to Client, immediately suspend or terminate the Biometric Services.

ADP

IN THE BUSINESS OF YOUR SUCCESS

New Business Incentive
Approved on 1/5/2019

Client Information:

Service Center:	0036
Parent Code:	10ALS
Client Name:	Village of Key Biscayne

Sales Information:

Sales Contact:	Kelly Daniels

Discount Approval:

Effective with the start of Workforce Now Time and Attendance :-Essential Time, you will receive an estimated (annual) savings of $2558.68 based on 175 employee count basis. The new discount on payroll will be 10%. This offer expires on 2/4/2019.

If the employee count changes during implementation, the estimated savings will also change based on the final employee count value.

This agreement constitutes understanding between Client and ADP based on the terms incorporated above and cannot be changed by cross-outs or handwritten substitutions. Any such changes requires the redrafting of the agreement for consideration by ADP and Client.

If you decide to not move forward with Workforce Now Time and Attendance :-Essential Time, the new business incentive discount will not be applied. Current pricing and features will continue at existing rates.

Client Signature: _____   **Date:** _____

Major Accounts Services
Master Services Agreement

A more human resource.™

ADP, LLC: (referred to herein as "**ADP**")

Client: (referred to herein as "**Client**")

One ADP Boulevard
Roseland, New Jersey 07068
United States

_____

_____
Attention

_____

(Effective Date)

ADP and Client agree that ADP shall provide Client with the following services in accordance with the terms set forth in this Major Accounts Services Master Services Agreement.

ANNEX A:	GENERAL TERMS AND CONDITIONS
ANNEX B:	PAYROLL, EMPLOYMENT TAX, WAGE PAYMENT AND EMPLOYMENT VERIFICATIONS SERVICES

BY SIGNING BELOW, CLIENT ACKNOWLEDGES THAT THEY HAVE REVIEWED THE ENTIRE MAJOR ACCOUNTS SERVICES MASTER SERVICES AGREEMENT INCLUDING THE TERMS AND CONDITIONS IN EACH ANNEX CORRESPONDING TO SERVICES PURCHASED PURSUANT TO THE SALES ORDER.

ADP, LLC

By: _____

Name: _____

Title: _____

Date: _____

Client

By: _____

Name: _____

Title: _____

Date: _____

1 **Definitions**.

    1.1 "**ADP**" has the meaning set forth on the cover page.

    1.2 "**ADP Application Programs**" means the computer software programs and related Documentation, including any updates, modifications or enhancements thereto, that are either delivered or made accessible to Client through a hosted environment by ADP in connection with the Services.

    1.3 "**ADP Workforce Now**" means ADP's web-based portal which provides a single point of access to ADP online solutions and employee-facing websites and resources related to payroll, HR, benefits, talent, and time and attendance. A general description of the Services can be found at www.productdescription.majoraccounts.adp.com (which may be modified from time to time provided, however, that any such modifications will not have a material adverse impact on any of the Services Client is receiving).

    1.4 "**Agreement**" means this Major Accounts Services- Master Services Agreement, consisting of the signature pages, the General Terms and Conditions, all exhibits, annexes, addendum, appendices and schedules, and each Amendment, if any.

    1.5 "**Affiliate**" means any individual, corporation or partnership or any other entity or organization (a "**person**") that controls, is controlled by or is under common control with Client. For purposes of the preceding definition, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through ownership of voting securities or by contract or otherwise.

    1.6 "**API**" means ADP approved application programming interface(s) that support point to point interaction of different systems.

    1.7 "**Approved Country**" means each country in which, subject to the terms of this Agreement, Client is authorized to use or receive the Services. The Approved Country for the Services is the United States.

    1.8 "**Access Country**" means each country in which, subject to the terms of this Agreement, Client is authorized to use or access the HR and/or Talent modules of ADP Workforce Now (but specifically excluding document cloud services and any other modules/tools that ADP, in its sole discretion, determines shall not be accessible to Client employees located outside the United States) and as approved by ADP. A list of Access Countries for the applicable Services is found at found at www.productdescription.majoraccounts.adp.com.

    1.9 "**Business Day**" means any day, except a Saturday, Sunday or a day on which ADP's bank is not open for business in the applicable jurisdiction where services are provided by ADP.

    1.10 "**Client**" has the meaning set forth on the cover page.

    1.11 "**Client Content**" means all information and materials provided by Client, its agents or employees, regardless of form, to ADP under this Agreement.

    1.12 "**Client Group**" means Client and Client's Affiliates means Client and Client's Affiliates who are receiving Services under this Agreement pursuant to a Sales Order.

    1.13 "**Client Infringement Event**" means (i) any change, or enhancement in the Services made by Client or any third party on behalf of Client other than at the direction of, or as approved by, ADP, (ii) Client's use of the Services except as contemplated by this Agreement, or (iii) to the extent ADP Application Programs include computer software programs, Client's use of other than the most current release or version of such computer software programs included in the ADP Application Programs, or Client's failure to use corrections or enhancements to such computer software programs included in the ADP Application Programs, in each case provided by ADP to Client at no charge, that results in a claim or action for infringement that could have been avoided by use of such current release or version, or by such corrections or enhancements.

    1.14 "**Confidential Information**" means all information of a confidential or proprietary nature, including pricing and pricing related information and all Personal Information, provided by the disclosing party to the receiving party under this Agreement but does not include (i) information that is already known by the receiving party, (ii) information that becomes generally available to the public other than as a result of disclosure by the receiving party in violation of this Agreement, and (iii) information that becomes known to the receiving party from a source other than the disclosing party on a non-confidential basis.

    1.15 "**Documentation**" means all manuals, tutorials and related materials that may be provided or made available to Client by ADP in connection with the Services.

    1.16 "**General Terms and Conditions**" means the terms and conditions contained in this Annex A.

    1.17 "**Gross Negligence**" has the meaning set forth in Section 7.3.1.

    1.18 "**Improvements**" has the meaning set forth in Section 5.4

    1.19 "**Incident**" means a security breach (as defined in any applicable law) or any other event that compromises the security, confidentiality or integrity of Client's Personal Information.

    1.20 "**Indemnitees**" has the meaning set forth in Section 6.3

    1.21 "**Indemnitor**" has the meaning set forth in Section 6.3.

    1.22 "**Intellectual Property Rights**" means all rights, title and interest to or in patent, copyright, trademark, service mark, trade secret, business or trade name, know-how and rights of a similar or corresponding character.

    1.23 "**Internal Business Purposes**" means the usage of the Services solely by the Client Group for its own internal business purposes, without the right to provide service bureau or other data processing services, or otherwise share or distribute the Services, to any party outside the Client Group, unless expressly contemplated by this Agreement.

    1.24 "**NACHA**" means the National Automated Clearing House Association.

    1.25 "**OFAC**" means the Office of Foreign Assets Control.

    1.26 "**Payee**" means any intended recipient of payments under the Payment Services and may include Client's employees, taxing authorities, governmental agencies, suppliers, benefit carriers and/or other third parties; provided that in the case of ADP Wage Payment Services, Payee shall be limited to Client's employees and independent contractors.

    1.27 "**Payment Services**" means any Services that involve electronic or check payments being made by ADP to third parties on Client's behalf and at its direction.

1.28 **"Personal Information"** means information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to such person's physical, physiological, mental, economic, cultural or social identity.

1.29 **"Price Agreement"** means a supplemental agreement between the parties that addresses future price increase rates on certain Services over a specific period of time.

1.30 **"Sales Order(s)"** means the document(s) between the parties that lists the specific Services purchased by Client Group from ADP.

1.31 **"Services"** means the services (including implementation services related thereto) listed in any Sales Order, and such other services as the parties may agree to be performed from time to time.

1.32 **"SOC 1"** means any routine Service Organization Control 1 reports.

1.33 **"Termination Event"** means with respect to any party, the occurrence of any of the following: (i) under the applicable bankruptcy laws or similar law regarding insolvency or relief for debtors, (A) a trustee, receiver, custodian or similar officer is appointed over a party's business or property, (B) a party seeks to liquidate, wind-up, dissolve, reorganize or otherwise obtain relief from its creditors, or (C) an involuntary proceeding is commenced against a party and the proceeding is not stayed, discharged or dismissed within thirty (30) days of its commencement, or (ii) a party's Standard and Poor's issuer credit rating falls to or below BB.

1.34 **"User"** means any single natural person who, subject to the terms of this Agreement, is authorized by Client to use, access or receive the Services.

2 Provision and Use of Services

2.1 **Provision of Services.** ADP, or one of its Affiliates, will provide the Services to Client in accordance with the terms of this Agreement and any applicable Sales Order(s). ADP will provide the Services in a good, diligent and professional manner in accordance with industry standards, utilizing personnel with a level of skill commensurate with the Services to be performed. ADP's performance of the Services (including any applicable implementation activities) is dependent upon the timely completion of Client's responsibilities and obligations under this Agreement. Without limitation of the foregoing, Client will timely provide the Client Content necessary for ADP to provide the Services.

2.2 **Cooperation.** ADP and Client will work together to implement the Services. Client will cooperate with ADP and execute and deliver all documents, forms, or instruments necessary for ADP to implement and render the Services. Client will provide ADP with all reasonable and necessary Client Content in the format requested by ADP, and will otherwise provide all reasonable assistance required of Client in order for ADP to implement the Services.

2.3 **Use of Services.** Client will use the Services in accordance with the terms of this Agreement and solely for its own Internal Business Purposes in the Approved Country and the Access Countries. Client will be responsible for the use of the Services by the Client Group and the Users in accordance with the terms of this Agreement. Client is responsible for the accuracy and completeness of the Client Content provided to ADP.

2.4 **Errors.** Client will promptly review all documents and reports produced by ADP and provided or made available to Client in connection with the Services and promptly notify ADP of any error, omission, or discrepancy with Client's records. ADP will promptly correct such error, omission or discrepancy and, if such error, omission or discrepancy was caused by ADP, then such correction will be done at no additional charge to Client.

2.5 **Records.** Without prejudice to ADP's obligation to retain the data necessary for the provision of the Services, ADP does not serve as Client's record keeper and Client will be responsible for retaining copies of all documentation received from and Client Content provided to ADP in connection with the Services to the extent required by Client.

3 Compliance.

3.1. **Applicable Laws.** Each party will comply with applicable laws and regulations that affect its business generally, including any applicable anti-bribery, export control and data protection laws

3.2. **Design of the Services.** ADP will design the Services, including the functions and processes applicable to the performance of the Services, to assist the Client in complying with its legal and regulatory requirements applicable to the Services, and ADP will be responsible for the accuracy of such design. Client and not ADP will be responsible for (i) how it uses the Services to comply with its legal and regulatory requirements and (ii) the consequences of any instructions that it gives or fails to give to ADP, including as part of the implementation of the Services, provided ADP follows such instructions. Services do not include any legal, financial, regulatory, benefits, accounting or tax advice.

3.3. **Online Statements.** If Client instructs ADP to provide online pay statements, Forms W2, Forms 1099 or Forms 1095-C, as applicable, without physical copies thereof, Client will be exclusively responsible for determining if and to what extent Client's use of online pay statements, Forms W2, Forms 1099 or Forms 1095-C, as applicable, satisfies Client's obligations under applicable laws and the consequences resulting from such determinations.

3.4. **Data Protection Laws.** Client represents that Personal Information transferred by Client or at Client's direction to ADP has been collected in accordance with applicable privacy laws, and ADP agrees that it shall only process the Personal Information as needed to perform the Services, or as required or permitted by law.

4   Confidentiality

4.1   General. All Confidential Information disclosed under this Agreement will remain the exclusive and confidential property of the disclosing party. The receiving party will not disclose to any third party the Confidential Information of the disclosing party and will use at least the same degree of care, discretion and diligence in protecting the Confidential Information of the disclosing party as it uses with respect to its own confidential information. The receiving party will limit access to Confidential Information to its employees with a need to know the Confidential Information and will instruct those employees to keep such information confidential. ADP may disclose Client's Confidential Information on a need to know basis to (i) ADP's subcontractors who are performing the Services, provided that ADP shall remain liable for any unauthorized disclosure of Client's Confidential Information by those subcontractors, (ii) employees of ADP's Affiliates, provided such employees are instructed to keep the information confidential as set forth in this Agreement and (iii) social security agencies, tax authorities and similar third parties, to the extent strictly necessary to perform the Services. ADP may use Client's and its employees' and other Services recipients' information in an aggregated, anonymized form, such that neither Client nor such person may be identified, and Client will have no ownership interest in such aggregated, anonymized data. Client authorizes ADP to release employee-related data, and such other data as required to perform the Services, to third party vendors of Client as designated by Client from time to time. Notwithstanding the foregoing, the receiving party may disclose Confidential Information (x) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it, (y) as appropriate to respond to any summons or subpoena or in connection with any litigation and (z) to the extent necessary to enforce its rights under this Agreement.

4.2   Return or Destruction. Upon the request of the disclosing party or upon the expiration or earlier termination of this Agreement, and to the extent feasible, the receiving party will return or destroy all Confidential Information of the disclosing party in the possession of the receiving party, provided that each party may maintain a copy if required to meet its legal or regulatory obligations and may maintain archival copies stored in accordance with regular computer back-up operations. To the extent that any portion of Confidential Information of a disclosing party remains in the possession of the receiving party, such Confidential Information shall remain subject to the generally applicable statutory requirements and the confidentiality protections contained in Section 4.1.

4.3   Transfer. The Services may be performed by ADP Affiliates or subcontractors located in other countries, and ADP may transfer or permit access to Client's Confidential Information, including employees' Personal Information, for the purposes of performing the Services outside of Canada and the United States of America. As a result, Client's employees' Personal Information may be subject to the laws of such jurisdictions and may be accessible to the courts and law enforcement authorities of those jurisdictions. Notwithstanding the foregoing, ADP will remain responsible for any unauthorized disclosure or access of Client's employees' Personal Information by any ADP Affiliate or subcontractor in the performance of any such Services.

5   INTELLECTUAL PROPERTY

5.1   Client IP Rights. Except for the rights expressly granted to ADP in this Agreement, all rights, title and interests in and to Client Content, including all Intellectual Property Rights inherent therein and pertaining thereto, are owned exclusively by Client or its licensors. Client hereby grants to ADP for the term of this Agreement a non-exclusive, worldwide, non-transferable, royalty-free license to use, edit, modify, adapt, translate, exhibit, publish, reproduce, copy and display the Client Content for the sole purpose of performing the Services; provided Client has the right to pre-approve the use by ADP of any Client trademarks or service marks.

5.2   ADP IP Rights. Except for the rights expressly granted to Client in this Agreement, all rights, title and interest in and to the Services, including all Intellectual Property Rights inherent therein and pertaining thereto, are owned exclusively by ADP or its licensors. ADP grants to Client for the term of this Agreement a personal, non-exclusive, non-transferable, royalty-free license to use and access the ADP Application Programs solely for the Internal Business Purposes in the Approved Countries and the Access Countries. The ADP Application Programs do not include any Client-specific customizations unless otherwise agreed in writing by the parties. Client will not obscure, alter or remove any copyright, trademark, service mark or proprietary rights notices on any materials provided by ADP in connection with the Services, and will not copy, decompile, recompile, disassemble, reverse engineer, or make or distribute any other form of, or any derivative work from, such ADP materials.

5.3   Ownership of Reports. Client will retain ownership of the content of reports and other materials that include Client Content produced and delivered by ADP as a part of the Services, provided that ADP will be the owner of the format of such reports. To the extent any such reports or other materials incorporate any ADP proprietary information, ADP (i) retains sole ownership of such proprietary information and (ii) provides the Client a fully paid up, irrevocable, perpetual, royalty-free license to access and use same for its Internal Business Purposes without the right to create derivative works (other than derivative works to be used solely for its Internal Business Purposes) or to further distribute any of the foregoing rights outside the Client Group.

5.4   Improvements. ADP will make available to Client, at no additional cost, software improvements, enhancements, or updates to any ADP Application Programs that are included in the Services (collectively "Improvements") if and as they are made generally available by ADP at no additional cost to ADP's other clients using the same ADP Application Programs as Client and receiving the same Services as Client. All Improvements provided under this Section 5.4 shall be considered part of the ADP Application Programs

6   Indemnities

6.1 ADP Indemnity. Subject to the remainder of this Section 6.1, and Section 6.3 and 7, ADP shall defend Client in any suit or cause of action, and indemnify and hold Client harmless against any damages payable to any third party in any such suit or cause of action, alleging that the Services or ADP Application Programs, as provided by ADP and used in accordance with the terms of this Agreement, infringe upon any Intellectual Property Rights of a third party in an Approved Country.   The foregoing infringement indemnity will not apply and ADP will not be liable for any damages assessed in any cause of action to the extent resulting from a Client Infringement Event or ADP's use of Client Content as contemplated by this Agreement. If any Service is held or believed to infringe on any third-party's Intellectual Property Rights, ADP may, in its sole discretion, (i) modify the Service to be non-infringing, (ii) obtain a license to continue using such Service, or (iii) if neither (i) nor (ii) are practical, terminate this Agreement as to the infringing Service.

6.2 Client Indemnity. Subject to Sections 6.3 and 7, Client will defend ADP against any third party claims and will indemnify and hold ADP harmless from any resulting damage awards or settlement amounts in any cause of action to the extent such cause of action is based on the occurrence of a Client Infringement Event or ADP's use of Client Content as contemplated by this Agreement.

6.3 Indemnity Conditions. The indemnities set forth in this Agreement are conditioned on the following: (i) the party claiming indemnification (the "Indemnitee") shall promptly notify the indemnifying party (the "Indemnitor") of any matters in respect of which it seeks to be indemnified, and shall give the Indemnitor full cooperation and opportunity to control the response thereto and the defense thereof, including without limitation any settlement thereof, (ii) the Indemnitor shall have no obligation for any claim under this Agreement if the Indemnitee makes any admission, settlement or other communication regarding such claim without the prior written consent of the Indemnitor, which consent shall not be unreasonably withheld, and (iii) the Indemnitee's failure to promptly give notice to the Indemnitor shall affect the Indemnitor's obligation to indemnify the Indemnitee only to the extent the Indemnitor's rights are materially prejudiced by such failure. The Indemnitee may participate, at its own expense, in such defense and in any settlement discussions directly or through counsel of its choice.

7   Limit on Liability

7.1   Ordinary Cap. Notwithstanding anything to the contrary in this Agreement and subject to the remainder of this Section 7, neither party's aggregate limit on monetary damages in any calendar year shall exceed an amount equal to six (6) times the average ongoing monthly Services fees paid or payable to ADP by Client during such calendar year (the "Ordinary Cap"). ADP will issue Client a credit(s) equal to the applicable amount and any such credit(s) will be applied against subsequent fees owed by Client.

7.2   Extraordinary Cap. As an exception to Section 7.1, if damages (monetary or otherwise) arise from a breach of Section 4.1 (Confidentiality) or Section 9.3 (Data Security), the Ordinary Cap will be increased by an additional six (6) times the average ongoing monthly Service fees paid or payable to ADP by Client during such calendar year (the "Extraordinary Cap"). For the avoidance of doubt, in no case shall either party's aggregate limit on monetary damages in any calendar year under this Agreement exceed twelve (12) times the average monthly ongoing Service fees paid or payable to ADP by Client during such calendar year.

7.3   Matters not Subject to Either Cap.   The limitations of liability set forth in Sections 7.1 and 7.2 shall not apply to:

7.3.1   Either party's Gross Negligence, or willful, criminal or fraudulent misconduct; for the purposes of this Agreement, "Gross Negligence" shall be defined as: (1) willful, wanton, careless or reckless conduct, misconduct, failures, omissions, or disregard of the duty of care towards others of a risk known or so obvious that the actor must be taken to have been aware of it, and with an intent to injure or so great as to make it highly probable that harm would follow and/or (2) failure to use even the slightest amount of care, or conduct so reckless, as to demonstrate a substantial lack of concern for the safety of others. For the avoidance of doubt, Gross Negligence must be more than any mere mistake resulting from inexperience, excitement, or confusion, and more than mere thoughtlessness or inadvertence or simple inattention;

7.3.2   The infringement indemnity set forth in Sections 6.1 and 6.2;

7.3.3   Client's obligations to pay the fees for Services;

7.3.4   ADP's obligations to provide credit monitoring and notifications as set forth in Section 10.2;

7.3.5   Client's funding obligations in connection with the Payment Services;

7.3.6   ADP's loss or misdirection of Client funds in possession or control of ADP due to ADP's error or omission;

7.3.7   In connection with the Employment Tax Services as provided in Annex B, (a) interest charges imposed by an applicable tax authority on Client for the failure by ADP to pay funds to the extent and for the period that such funds were held by ADP and (b) all tax penalties resulting from ADP's error or omission in the performance of such Service. The provisions of this (iv) shall only apply if (x) Client permits ADP to act on Client's behalf in any communications and negotiations with the applicable taxing authority that is seeking to impose any such penalties or interest and (y) Client assists ADP as reasonably required by ADP.

7.3.8   Client's use or access of the Services and/or ADP Application Programs outside of the Approved Countries and/or Access Countries.

7.4   Mitigation of Damages. ADP and Client will each use reasonable efforts to mitigate any potential damages or other adverse consequences arising from or relating to the Services.

7.5   No Consequential Damages.   NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT AND ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW, NONE OF ADP, CLIENT OR ANY BANK WILL BE RESPONSIBLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS OR PROFITS, BUSINESS INTERRUPTIONS OR HARM TO REPUTATION) THAT ANY OTHER PARTY OR ITS RESPECTIVE AFFILIATES MAY INCUR OR EXPERIENCE IN

CONNECTION WITH THIS AGREEMENT OR THE SERVICES, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The foregoing exclusion shall not apply to claims for consequential damages arising from ADP's or Client's (i) willful, criminal or fraudulent misconduct, or (ii) breach or breaches of Section 4.1 or Section 9.3 under this Agreement; provided however, that any consequential damages recovered by Client or ADP in a calendar year for claims pursuant to Section 7.5(ii) will be subject to the Extraordinary Cap set forth in Section 7.2 above.

8   WARRANTIES AND DISCLAIMER

8.1   Warranties.   Each party warrants that (i) it has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby and (ii) this Agreement has been duly and validly executed and delivered and constitutes the valid and binding agreement of the parties, enforceable in accordance with its terms.

8.2   DISCLAIMER.   EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL SERVICES, ADP APPLICATION PROGRAMS AND EQUIPMENT PROVIDED BY ADP OR ITS SUPPLIERS ARE PROVIDED "AS IS" AND ADP AND ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM ANY WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, COMPLETENESS, CURRENTNESS, NON-INFRINGEMENT, NON-INTERRUPTION OF USE, AND FREEDOM FROM PROGRAM ERRORS, VIRUSES OR ANY OTHER MALICIOUS CODE, WITH RESPECT TO THE SERVICES, THE ADP APPLICATION PROGRAMS, ANY CUSTOM PROGRAMS CREATED BY ADP OR ANY THIRD-PARTY SOFTWARE DELIVERED BY ADP AND RESULTS OBTAINED THROUGH THE USE THEREOF.
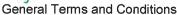
9   SECURITY AND CONTROLS

9.1   Service Organization Control Reports.   Following completion of implementation of any applicable Services, ADP will, at Client's request and at no charge, provide Client with copies of any routine Service Organization Control 1 reports ("SOC 1 Reports") (or any successor reports thereto) directly related to the core ADP Products utilized to provide the Services provided hereunder for Client and already released to ADP by the public accounting firm producing the report. SOC 1 Reports are ADP Confidential Information and Client will not distribute or allow any third party (other than its independent auditors) to use any such report without the prior written consent of ADP.   Client will instruct its independent auditors or other approved third parties to keep such report confidential and Client will remain liable for any unauthorized disclosure of such report by its independent auditors or other approved third parties.

9.2   Business Continuity; Disaster Recovery.   ADP has established and will maintain a commercially reasonable business continuity and disaster recovery plan and will follow such plan.

9.3   Data Security.   ADP has established and will maintain an information security program containing appropriate administrative, technical and physical measures to protect Client data (including any Personal Information therein) against accidental or unlawful destruction, alteration, unauthorized disclosure or access consistent with applicable laws. In the event ADP suspects any unauthorized access to, or use of, the Services, ADP may suspend access to the Services to the extent ADP deems necessary to preserve the security of the Client's data.

10   DATA SECURITY INCIDENT

10.1   Notification.   If ADP becomes aware of a security breach (as defined in any applicable law) or any other event that compromises the security, confidentiality or integrity of Client's Personal Information (an "**Incident**"), ADP will take appropriate actions to contain, investigate and mitigate the Incident. ADP shall notify Client of an Incident as soon as reasonably possible.

10.2   Other ADP Obligations.   In the event that an Incident is the result of the failure of ADP to comply with the terms of this Agreement, ADP shall, to the extent legally required or otherwise necessary to notify the individuals of potential harm, bear the actual, reasonable costs of notifying affected individuals. ADP and Client shall mutually agree on the content and timing of any such notifications, in good faith and as needed to meet applicable legal requirements. In addition, where notifications are required and where such monitoring is practicable and customary, ADP shall also bear the cost of one year of credit monitoring to affected individuals in applicable jurisdictions.

11   PAYMENT TERMS

11.1   Fees and Fee Adjustments.   Client will pay to ADP the fees and other charges for the Services as set forth in the Sales Order. Unless there is a Price Agreement in effect, the fees set forth in the Sales Order will remain fixed during the first six (6) months following the Effective Date and thereafter, ADP may modify the fees on an annual basis upon thirty (30) days' prior written notice to Client. The fees presented in the Sales Order were calculated based upon particular assumptions relative to Client requirements (including funding requirements), specifications, volumes and quantities as reflected in the applicable Sales Order and related documentation, and if Client's actual requirements vary from what is stated, ADP may adjust the fees based on such changes. The fees do not include any customizations to any Service.
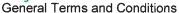
11.2 Additional Services and Charges. If Client requests additional services offered by ADP not included in this Agreement, and ADP agrees to provide such services: (i) those services and related fees will be included in a separate Sales Order; (ii) any Services provided to Client but not included in a Sales Order will be provided subject to the terms of this Agreement and charged at the applicable rates as they occur; and (iii) those services will be considered to be "Services" for purposes of this Agreement. Additional charges may be assessed Client in relation to the performance of the Services in certain circumstances, including without limitation, late funding, an insufficient funds notification and emergency payment requests from Client.

11.3 Fees for Implementation Services. Implementation fees are due and payable by Client upon the go-live date for such Services. However, if this Agreement or any Service are terminated after implementation services have started but before the go-live date, the greater of the following amounts shall be immediately due and payable by Client: (i) implementation fees for implementation services performed up to the date of termination; or (ii) 30% of the total Implementation Fees set out in the Sales Order.

11.4 Invoicing. ADP will notify Client of all applicable Services fees payable by Client by way of invoice or other method (i.e. ADP's on-line reporting tool). Client will pay the amount on each invoice or such other similar document in full within seven (7) days of notification via the agreed to method of payment. All amounts not paid when due are subject to a late payment charge of one and one-half percent (1½%) per month (not to exceed the maximum allowed by applicable law) of the past due amount from the due date until the date paid.

11.5 Currency. Client shall pay the fees in US dollars.

11.6 Taxes. Unless Client provides ADP a valid tax exemption or direct pay certificate, Client will pay directly, or will pay to ADP, an amount equal to all applicable taxes or similar fees levied or based on the Agreement or the Services, exclusive of taxes based on ADP's net income.

11.7 Postage, Shipping Travel and out-of-pocket expenses. ADP will invoice Client for postage charges, delivery charges, other third party charges, and reasonable travel and out-of-pocket expenses as necessary to provide the Services.

11.8 Funding Requirements and Disbursement Disclosures. With respect to Payment Services to be deducted by ACH or Pre-Authorized Debit, Client must have sufficient good funds for payment of the payroll obligations, tax filing obligations, wage garnishment deduction obligations, service fees (as applicable), expenses, and any other applicable charges, to be direct debited from Client's designated account no later than one (1) banking days prior to the pay date for the applicable payroll (in the case of payroll processing services), or as otherwise agreed by the parties. For reverse wire clients, funds must be available (a) one (1) banking day prior to the pay date for the applicable payroll (in the case of the ADP Employment Tax Services) and (b) two (2) banking days prior to the pay date for all other Payment Services, or as otherwise agreed by the parties. In consideration for the additional costs incurred by ADP in providing wire transfer service, Client agrees to pay a reasonable fee (currently $10.00) for each wire transfer. Notwithstanding the foregoing, ADP reserves the right to modify the aforementioned deadlines at any time and will communicate any such modifications to Client.

11.9 Change Control. In the event either party requests a change in the scope of Services (including implementation services) or any rework is required by ADP as a result of a delay by Client in implementation of any Services (each a "**Change Control Item**"), the parties shall address such change request, if possible via ADP's change control process. Change Control Items and the cost associated with such changes (if any) to the Services shall be mutually agreed to by the parties and shall be defined in a Statement of Work agreed to by the parties, with the exceptions of Change Control Items that are required to be made by law or regulation applicable to the Services or to the duration of implementation services, which ADP will notify Client of prior to making the change.

12 Term; Termination; Suspension

12.1 Term; Termination for Convenience This Agreement will commence on the Effective Date and remain in effect until terminated by either party in accordance with the terms hereof. Subject to the terms of any Price Agreement, either party may terminate this Agreement or any Service upon ninety (90) days' prior written notice to the other party. In the event Client does not provide ADP with the proper notice as set forth in the previous sentence (or as set forth in any Annex herein), Client shall pay ADP for any fees for Services that would have been incurred by Client during such notice period (calculated based on an average of the prior six months of invoices for such terminated Services, or shorter period of time if there has been less than six months of invoices).

12.2 Termination for Cause. Either party may terminate this Agreement for the other's material breach of this Agreement if such breach is not cured within sixty (60) days following notice thereof or in the event either party is the subject of a Termination Event. In addition, ADP may terminate this Agreement in the event Client fails to timely pay fees for Services performed within 10 days following notice that such fees are past due. ADP may also terminate this Agreement or the Services immediately on written notice to Client if the provision of Service to Client causes or will cause any affiliate or subsidiary of ADP to be in violation of any laws, rules or regulations applicable to such affiliate or subsidiary. Notwithstanding anything to the contrary in this Agreement, email will be considered adequate notification for the purposes of this Section 12.

12.3 Suspension. Without limiting the foregoing, the parties agree that Payment Services involve credit risk to ADP. Payment Services may be suspended by ADP (A) immediately if: (i) Client has failed to remit sufficient, good and available funds within the deadline and via the method of delivery agreed upon as it relates to the applicable Payment Services; or (ii) Client breaches any rules promulgated by NACHA as it relates to ADP conducting electronic payment transactions on behalf of Client, and (B) with 24 hour notice if: (i) a bank notifies ADP that it is no longer willing to originate debits from Client's

account(s) or credits for Client's behalf for any reason or (ii) the authorization to debit Client's account is terminated or ADP reasonably believes that there is or has been fraudulent activity on the account. If the Payment Services are terminated or suspended pursuant to Sections 12.2 or 12.3, Client acknowledges that ADP shall be entitled to allocate any funds in ADP's possession that have been previously remitted or otherwise made available by Client to ADP relative to the Payment Services in such priorities as ADP may determine appropriate, including reimbursing ADP for payments made by ADP on Client's behalf to a third party. If the Payment Services are terminated by ADP, Client understands that it will (x) immediately become solely responsible for all of Client's third party payment obligations covered by the Payment Services then or thereafter due (including, without limitation, for ADP Employment Tax Services any and all penalties and interest accruing after the date of such termination, other than penalties and interest for which ADP is responsible under Section 7.3.7), and (y) reimburse ADP for all payments properly made by ADP on behalf of Client to any payee, which have not been paid or reimbursed by Client. If the Payment Services remain suspended for thirty (30) days, the Payment Services will be terminated on the 31st day following suspension.

12.4 **Post Termination**. At any time prior to the actual termination date, Client may download Client's information or reports available to it in conjunction with all of the Services provided to Client by ADP. Upon termination of this Agreement, Client may order from ADP any data extraction offered by ADP, at the then prevailing hourly time and materials rate.

13   Reserved.

14   Additional Terms. In addition to the terms set forth in any subsequent Annexes attached hereto, the following terms shall apply.

14.1 **ESS & MSS Technology.** Employee self-service (ESS) and Manager self-service (MSS) functionality provides all Client Users (practitioners, managers and employees) 24x7 online access to ADP Application Programs. The following additional terms apply to the ESS & MSS Technology:

    14.1.1 Client acknowledges that Client's employees or participants may input information into the self-service portions of the ADP Application Programs. ADP shall have no responsibility to verify, nor does ADP review the accuracy or completeness of the information provided by Client's employees or participants to ADP using any self-service features. ADP shall be entitled to rely upon such information in the performance of the Services under this Agreement as if such information was provided to ADP by Client directly.

14.2 **ADP Marketplace**. Enable Client to build applications and/or purchase available applications via online store. Provide access to certain Client data stored in ADP systems via industry-standard Application Programming Interfaces (APIs). The following additional terms apply to the ADP Marketplace (applies only if Client accesses ADP Marketplace Services):

    14.2.1 **Transmitting Information to Third Parties.** In the event that Client elects to use an API to provide any Client Content or employee or plan participant information to any third party, Client represents that it has acquired any consents or provided any notices required to transfer such content or information and that such transfer does not violate any applicable international, federal, state, or local laws and/or regulations. ADP shall not be responsible for any services or data provided by any such third party.

    14.2.2 **Use of the ADP APIs.** Client will use the ADP APIs to access Client's information only. Client may not use any robot, spider, or other automated process to scrape, crawl, or index the ADP Marketplace and will integrate Client's application with the ADP Marketplace only through documented APIs expressly made available by ADP. Client also agrees that Client will not (a) use the ADP Marketplace or any ADP API to transmit spam or other unsolicited email; (b) take any action that may impose an unreasonable or disproportionately large load on the ADP infrastructure, as determined by ADP; or (c) use the ADP APIs or the ADP Marketplace in any way that threatens the integrity, performance or reliability of the ADP Marketplace, Services or ADP infrastructure. ADP may limit the number of requests that Client can make to the ADP API gateway to protect ADP's system or to enforce reasonable limits on Client's use of the ADP APIs. Specific throttling limits may be imposed and modified from time to time by ADP.

15   Miscellaneous

15.1 **Amendment**. This Agreement may not be modified, supplemented or amended, except by a writing signed by the authorized representatives of ADP and Client.

15.2 **Assignment**. Neither this Agreement, nor any of the rights or obligations under this Agreement, may be assigned by any party without the prior written consent of the other party, such consent not to be unreasonably withheld. However, Client may assign any or all of its rights and obligations to any other Client Group member and ADP may assign any or all of its rights and obligations to any Affiliate of ADP, provided that any such assignment shall not release the assigning party from its obligations under this Agreement. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns.

15.3 **Additional Documentation**. In order for ADP to perform the Services, it may be necessary for Client to execute and deliver additional documents (including reporting agent authorization, client account agreement, limited powers of attorney, etc.) and Client agrees to execute and deliver such additional documents.

15.4 **Subcontracting**. Notwithstanding Section 15.2, ADP reserves the right to subcontract any or all of the Services, provided that ADP remains fully responsible under this Agreement for the performance of any such subcontractor. For the avoidance of doubt, third parties used by ADP to provide delivery or courier services, including the postal service in any country or any third party courier service, and banking institutions, are not considered subcontractors of ADP.

15.5 **Entire Agreement**. This Agreement constitutes the entire agreement and understanding between ADP and Client with respect to its subject matter and merges and supersedes all prior discussions, agreements and understandings of every kind and nature between the parties. No party will be bound by any representation, warranty, covenant, term or condition

other than as expressly stated in this Agreement. Except where the parties expressly state otherwise in a relevant exhibit, annex, appendix or schedule, in case of conflict or inconsistency between this Annex A and any such exhibit, annex, appendix or schedule, this Annex A will prevail and control. Purchase orders or statements of work submitted to ADP by Client will be for Client's internal administrative purposes only and the terms and conditions contained in any purchase order or statements of work will have no force and effect and will not amend or modify this Agreement.

15.6 No Third Party Beneficiaries. Except as expressly provided herein or in an applicable exhibit, annex, appendix or schedule, nothing in this Agreement creates, or will be deemed to create, third party beneficiaries of or under this Agreement. Client agrees that ADP's obligations in this Agreement are to Client only, and ADP has no obligation to any third party (including, without limitation, Client's personnel, directors, officers, employees, Users and any administrative authorities).

15.7 Force Majeure. Any party to this Agreement will be excused from performance of its obligations under this Agreement, except for Client's obligation to pay the fees to ADP pursuant to Section 11, for any period of time that the party is prevented from performing its obligations under this Agreement due to an act of God, war, earthquake, civil disobedience, court order, labor disputes or disturbances, governmental regulations, communication or utility failures or other cause beyond the party's reasonable control. Such non-performance will not constitute grounds for breach.

15.8 Waiver. The failure by any party to this Agreement to insist upon strict performance of any provision of this Agreement will not constitute a waiver of that provision. The waiver of any provision of this Agreement shall only be effective if made in writing signed by the authorized representatives of ADP and Client and shall not operate or be construed to waive any future omission or breach of, or compliance with, any other provision of this Agreement.

15.9 Headings. The headings used in this Agreement are for reference only and do not define, limit, or otherwise affect the meaning of any provisions hereof.

15.10 Severability. If any provision of this Agreement is finally determined to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality or enforceability of the remainder of this Agreement will not in any way be affected or impaired and such court shall have the authority to modify such invalid, illegal or unenforceable provision to the extent necessary to render such provision valid, legal or enforceable, preserving the intent of the parties to the furthest extent permissible.

15.11 Relationship of the Parties. The performance by ADP of its duties and obligations under this Agreement will be that of an independent contractor and nothing contained in this Agreement will create, construe or imply an agency, joint venture, partnership or fiduciary relationship of any kind between ADP and Client. None of ADP's employees, agents or subcontractors will be considered employees, agents or subcontractors of Client. Unless expressly stated in this Agreement, none of ADP, its employees, agents or its subcontractors may enter into contracts on behalf of, bind, or otherwise obligate Client in any manner whatsoever.

15.12 Governing Law. This Agreement is governed by the laws of the State of New York without giving effect to its conflict of law provisions.

15.13 Jurisdiction. Any disputes that may arise between ADP and Client regarding the performance or interpretation of this Agreement shall be subject to the exclusive jurisdiction of the state and federal courts of New York, New York. The parties hereby irrevocably consent to the exclusive jurisdiction of the state and federal courts of New York, New York and waive any claim that any proceedings brought in such courts have been brought in an inconvenient forum. THE PARTIES HEREBY IRREVOCABLY WAIVE THEIR RIGHT TO TRIAL BY JURY.

15.14 Counterparts. This Agreement may be signed in two or more counterparts by original, .pdf (or similar format for scanned copies of documents) or facsimile signature, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15.15 Notices. All notices required to be sent or given under this Agreement will be sent in writing and will be deemed duly given and effective (i) immediately if delivered in person, or (ii) upon confirmation of signature recording delivery, if sent via an internationally recognized overnight courier service with signature notification requested to Client at the address indicated on the signature page hereof and to ADP at 15 Waterview Boulevard, Parsippany, New Jersey 07054, Attention: Legal Department or to any other address a party may identify in writing from time to time. A copy (which shall not constitute notice) of all such notices shall be sent to ADP at One ADP Boulevard, MS 425, Roseland, New Jersey 07068, Attention: General Counsel and to Client at the address indicated on the cover page hereof.

15.16 Survival. Those provisions which by their content are intended to, or by their nature would, survive the performance, termination, or expiration of this Agreement, shall survive termination or expiration of this Agreement

1. **Payroll Services.** Administration and processing of payroll including performing gross-to-net calculations and generating and/or transmitting of payment instructions and also including the following:
   1.1 **ADP Employment Tax Services.** Coordination of payroll-related tax and/or regulatory agency deposits, filings, and reconciliations on behalf of employers.
   1.2 **ADP Wage Payment Services.** Payment of wages, commissions, consulting fees, or similar compensation or work-related expenses in the employment context to employees and independent contractors via direct deposit, check, or payroll debit cards, in each case to the extent the method of payment delivery is in scope, and online posting of pay statements to the extent applicable. Such services may be provided via ADPCheck Services, ADP Direct Deposit Services, and ALINE Card Services (if elected additional terms set forth in Annex J shall apply).
   1.3 **Print and Online Statement Services.** Print and distribution of payroll checks, pay statements, and/or year-end statements, as well as online posting of pay statements and/or year-end statements.
   1.4 **Wage Garnishment Payment Services.** Garnishment payment processing and disbursement of payments to appropriate payees as directed by client.

2. **Billing.** Payroll, Employment Tax & Wage Payment Services and any other Services bundled into the pricing for such services are billed immediately following Client's first payroll processing. The billing count is based on the number of pays submitted during each payroll processing period, therefore total billing may fluctuate.

3. **ADP Wage Payment Services.** The following additional terms and conditions apply to the ADP Wage Payment Services:
   3.1 **Client Credentialing.** Client understands and acknowledges that the implementation and ongoing provision of Payment Services are conditioned upon Client passing (and continuing to pass) a credentialing process that ADP may deem necessary in connection with the provision of Payment Services.
   3.2 **Additional Requirements.** Payment Services may be subject to the rules and standards of any applicable clearing house, payment and/or card networks or associations. Client and ADP each agree to comply with all such rules and standards applicable to it with respect to the Payment Services.
   3.3 **Funding Obligations.** Client acknowledges that ADP is not a lender. As such, as a condition to receiving services, Client will remit or otherwise make available to ADP sufficient, good and available funds within the agreed-to deadline and via the agreed-to method of delivery to satisfy all of Client's third-party payment obligations covered by the Agreement. ADP will apply such funds to satisfy such third-party payment obligations. ADP will not be required to provide Payment Services if ADP has not received all funds required to satisfy Client's third-party payment obligations. Client will immediately notify ADP if it knows or should know that it will not have sufficient funds to satisfy the amounts required in connection with the Payment Services. If Client has a material adverse change in its condition, ADP may modify the funding method or deadline by which funds must be made available to ADP for payment to Payees. Client agrees to pay to ADP upon demand any amounts that have been paid by ADP to satisfy Client's third party payment obligations prior to receiving such amounts from Client.
   3.4 **Investment Proceeds; Commingling of Client Funds.** IF ADP RECEIVES CLIENT'S FUNDS IN ADVANCE OF THE TIME ADP IS REQUIRED TO PAY SUCH FUNDS TO THIRD PARTIES, ALL AMOUNTS EARNED ON SUCH FUNDS, IF ANY, WHILE HELD BY ADP WILL BE FOR THE SOLE ACCOUNT OF ADP. ADP may commingle Client's funds with similar funds from other clients and with similar ADP and ADP-administered funds. ADP utilizes a funds control system that maintains general ledger entries by client and/or by jurisdiction.
   3.5 **Recovery of Funds; Stop Payment Requests.** Client agrees to cooperate with ADP and any other third parties to recover funds erroneously issued or transferred to any Payee or credited to any Payee's account. If Client desires to stop payment on any check or to recall or reverse any electronic payment, Client will provide ADP with a stop payment request in the form required by ADP. Client acknowledges that ADP's placement of a stop order request is not a guarantee that such stop payment will occur.
   3.6 **ADPCheck Services.** Client agrees not to distribute any ADPChecks to Payees in a manner that would allow Payees to access the associated funds before pay date. With respect to ADPChecks drawn on an ADP bank account, to request a stop payment, Client shall provide ADP with a written stop payment order request in the form provided by ADP and ADP shall place a stop payment order in accordance with its standard operating procedures.
   3.7 **Full Service Direct Deposit (FSDD).** Prior to the first credit to the account of any employee or other individual under FSDD services, Client shall obtain and retain a signed authorization from such employee or individual authorizing the initiation of credits to such party's account and debits of such account to recover funds credited to such account in error.

4. **ADP Employment Tax Services.** The following additional terms and conditions apply to the ADP Employment Tax Services:
   4.1 **Important Tax Information (IRS Disclosure).** Notwithstanding Client's engagement of ADP to provide the ADP Employment Tax Services in the United States, please be aware that Client remains responsible for the timely filing of payroll tax returns and the timely payment of payroll taxes for its employees. The Internal Revenue Service recommends that employers enroll in the U.S. Treasury Department's Electronic Federal Tax Payment System (EFTPS) to monitor their accounts and ensure that timely tax payments are being made for them, and that online enrollment in EFTPS is available at www.eftps.gov; an enrollment form may also be obtained by calling (800) 555-4477; that state tax authorities generally offer similar means to verify tax payments; and that Client may contact appropriate state offices directly for details
   4.2 **State Unemployment Insurance Management.** Subject to Section 15.7 of Annex A, Client's compliance with its obligations in Sections 4.2.1 and 4..2.2 herein, and any delays caused by third parties (e.g., postal service, agency system and broker delays) and events beyond ADP's reasonable control, ADP will deliver the State Unemployment Insurance Management Services ("**SUI Management Services**") within the time periods established by the relevant unemployment compensation agencies.

4.2.1 **Provision of Information; Contesting Claims**. Client will on an ongoing basis provide ADP and not prevent ADP from furnishing all information necessary for ADP to perform the SUI Management Services within the timeframes established or specified by ADP. The foregoing information includes without limitation the claimants' names, relevant dates, wage and separation information, state-specific required information, and other documentation to support responses to unemployment compensation agencies.

4.2.2 **Transfer of Data**. Client may transfer the information described in Section A to ADP via: (i) on-line connection between ADP and Client's computer system, or (ii) inbound data transmissions from Client to ADP. Client will provide the data using mutually acceptable communications protocols and delivery methods. Client will promptly notify ADP in writing if Client wishes to modify the communication protocol or delivery method.

4.2.3 Client acknowledges that ADP is not providing storage or record keeping of Client records as part of the SUI Management Services, and that if the SUI Management Services are terminated, ADP may, in conformity with Section 4 of Annex A, dispose of all such records. If the SUI Management Services are terminated, any access Client has to ADP websites containing Client's data will expire and Client will be responsible for downloading and gathering all relevant data prior to expiration of any such access that may have been granted.

5 **Employment Verification Services.** Client desires to receive and ADP agrees to provide the following Services to Client in addition to those already provided under the Agreement.

5.1 **Definitions**. Unless a capitalized term used herein is defined herein, it shall have the same meaning ascribed that term in the Agreement.

5.1.1 **"FCRA"** Fair Credit Reporting Act, 15 U.S.C. §1681 et seq.

5.1.2 **"Verification Agent"** has the meaning set forth in Section 5.2.1.1

5.1.3 **"Verification Data"** has the meaning set forth in Section 5.2.1.1.

5.1.4 **"Verifiers"** has the meaning set forth in Section 5.2.1.1.

5.2 **Additional Terms**. To the extent Client has not opted out of receipt of Employment Verification Services, the following additional terms and conditions shall apply:

5.2.1 **Verification Services and Authorization as Agent.**

5.2.1.1 ADP currently provides the Employment Verification Services through The Work Number®, an Equifax Workforce Solutions service though ADP reserves the right to provide them through another entity (each, a "Verification Agent"). Notwithstanding anything to the contrary in Section 4.1 of Annex A, Client authorizes ADP and its Verification Agents to disclose, on Client's behalf, employment information (including employees' place of employment and employment status) and income information (including total wages per year to date and previous year income) of Client and Client's employees (or former employees) (collectively, "Verification Data"), to commercial, private, non-profit and governmental entities and their agents (collectively, "Verifiers"), who wish to obtain or verify any of Client's employees' (or former employees') Verification Data. Verification Data will be disclosed to Verifiers who certify they are entitled to receive such data (as described below) pursuant to the FCRA, and, in the case of income information requests, who additionally certify they have a record of the employee's consent to such disclosure or who utilize a salary key. In accordance with FCRA, Verification Data may be provided to Verifiers where (i) the employee has applied for a benefit (such as credit, other employment or social services assistance); (ii) the employee has obtained a benefit and the Verifier is seeking to (a) determine whether the employee is qualified to continue to receive the benefit; and/or (b) collect a debt or enforce other obligations undertaken by the employee in connection with the benefit; or (iii) the Verifier is otherwise entitled under FCRA to obtain the Verification Data. In certifying they have a record of the employee's consent, Verifiers generally rely on the employee's signature on the original application as authorization for the Verifier to access the employee's income data at the time of the application and throughout the life of the obligation. Client understands that Verifiers are charged for commercial verifications processed through ADP or its Verification Agents.

5.2.1.2 **Data Quality.** If requested by ADP, Client agrees to work with ADP during implementation to produce a test file and validate the Verification Data included in the Verification Services database using validation reports made available by ADP or its Verification Agents. If Client uses ADP's hosted payroll processing services, ADP will update the Verification Services database with the applicable Verification Data available on ADP's payroll processing system.

5.2.1.3 **Notice to Furnishers of Information: Obligations of Furnishers of Information ("Notice to Furnishers").** Client certifies that it has read the Notice to Furnishers provided to Client at the following URL: https://www.consumer.ftc.gov/articles/pdf-0092-notice-to-furnishers.pdf. Client understands its obligations as a data furnisher set forth in such notice and under FCRA which include duties regarding data accuracy and investigation of disputes, and certifies it will comply with all such obligations. Client further understands that if it does not comply with such obligations, ADP may correct incorrect Verification Data on behalf of Client or terminate the Employment Verification Services upon 90 days prior written notice to Client.

5.2.1.4 **Archival Copies**. Notwithstanding anything to the contrary in Annex A, Client agrees that, after the termination of this Agreement, ADP and its Verification Agents may maintain archival copies of the Verification Data as needed to show the discharge and fulfillment of obligations to Client's employees and former employees and the provisions of Section 4.1 of Annex A will continue to apply during the time that ADP and its Verification Agents maintain any such archival copies.

5.2.1.5 **Additional Termination Provisions for Employment Verification Services**. ADP may, in its sole discretion, terminate the Employment Verification Services at any time upon 90 days prior written notice to Client should a Verification Agent notify ADP that it is no longer willing to provide the Employment Verification Services and ADP, after taking commercially reasonable steps, cannot engage a successor Verification Agent